STATE OF MICHIGAN

COURT OF APPEALS

THOMAS MAYKOVICH,

Plaintiff-Appellant,

V

MAGED CONTRACTING, INC.,

Defendant/Cross-Plaintiff-Appellee,

and

THOMAS MAGED,

Defendant-Appellee,

and

CITY OF NOVI,

Defendant/Cross-Defendant-Appellee.

UNPUBLISHED
October 19, 2001

No. 216595
Oakland Circuit Court
LC No. 97-552204-CE

Before: McDonald, P.J., and Murphy and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from an order granting summary disposition to defendants under MCR 2.116(C)(5) and (10). The trial court determined that plaintiff lacked standing to sue. We affirm in part and reverse and remand in part.

In a prior action, defendant City of Novi sued plaintiff's sister to abate a nuisance on her property. Plaintiff was not a party to that action, which resulted in a default judgment declaring the property a public nuisance and authorizing the city to abate the nuisance by removing various items from the property.

Plaintiff, who owns an adjoining parcel of real property, brought the instant action alleging that defendants, during the course of abating the nuisance on his sister's property,

wrongfully damaged and converted personal property belonging to him that was located on his sister's property. Plaintiff further alleged that defendants wrongfully damaged his own, neighboring real property and wrongfully damaged and removed personal items from his real property, which was not subject to the nuisance abatement judgment. The trial court granted summary disposition to defendants, finding that plaintiff lacked standing to pursue the action because he was not a party to the prior action and suffered only incidental injuries as a result of the enforcement of the judgment in the prior action.

We review de novo a trial court's grant of summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition is appropriate under MCR 2.116(C)(5) if the party asserting the claim lacks the legal capacity to sue. In reviewing a grant of summary disposition based on the lack of capacity to sue, we must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence to determine if the defendant was entitled to judgment as a matter of law. See *Franklin Historic District Study Committee v Village of Franklin*, 241 Mich App 184, 186-187; 614 NW2d 703 (2000).

Summary disposition is appropriate under MCR 2.116(C)(10) if, except with regard to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment or partial judgment as a matter of law. When reviewing a motion granted under this subrule, we must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the opposing party. *Richie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). This Court is liberal in finding a genuine issue of material fact. *Marlo Beauty Supply, Inc v Farmers Ins Group*, 227 Mich App 309, 320; 575 NW2d 324 (1998), holding modified on other grounds by *Harts v Farmers Ins Exchange*, 461 Mich 1 (1999).

Plaintiff first argues that the trial court improperly granted summary disposition on the basis of standing because defendants did not move for summary disposition on that basis but merely raised the issue in their responsive pleadings. We disagree. First, the record indicates that the City of Novi specifically requested summary disposition based on plaintiff's lack of standing. Moreover, plaintiff initially moved for summary disposition, and a court may properly grant summary disposition to an opposing party if it appears to the court that that party, rather than the moving party, is entitled to judgment. MCR 2.116(I)(2); *Sharper Image Corp v Dep't of Treasury*, 216 Mich App 698, 701; 550 NW2d 596 (1996). Finally, plaintiff had notice of the standing issue, since defendants raised it in their responsive pleadings. See *Hover v Chrysler Corp*, 209 Mich App 314, 317; 530 NW2d 96 (1995). Under these circumstances, we conclude that plaintiff's argument does not warrant relief.

Plaintiff next argues that the trial court erred substantively in ruling that plaintiff lacked standing to bring this action. To have standing, a plaintiff must demonstrate that he has a legally protected interest that is in jeopardy of being adversely affected. *Wortelboer v Benzie County*, 212 Mich App 208, 214; 537 NW2d 603 (1995). The plaintiff must allege "a sufficient personal stake in the outcome of the controversy to ensure that the dispute sought to be adjudicated will be presented in an adversarial context that is capable of judicial resolution." *Id.* Generally, a plaintiff can show a personal stake in a lawsuit by demonstrating that he has been injured. *Id.*

However, "a wrong to one gives no right of action to another whom it incidentally injures." *Health Central v Comm of Ins*, 152 Mich App 336, 348; 393 NW2d 625 (1986).

We agree with the trial court that plaintiff had no standing to sue for damages resulting from the removal of items from his sister's property. Indeed, it is undisputed that plaintiff had no legal interest in the real property that was the subject of the default judgment and that he was not a party to the prior lawsuit. The loss plaintiff suffered because of the removal of items from his sister's land was incidental to the execution of the nuisance abatement judgment. If the execution of this judgment was carried out wrongfully such that the land or the personal property contained on the land was damaged without authorization, the sister is the proper party to seek redress.

However, plaintiff's complaint also alleged injuries resulting from damage to his own real property and to his personal property that was stored on his own real property. The nuisance abatement judgment did not relate to this allegedly damaged property. We conclude that the alleged damage to plaintiff's own land and to his personal property located on that land cannot be considered merely incidental to the enforcement of the default judgment relating to plaintiff's sister's property. Indeed, Random House Webster's College Dictionary (1997), p 659, defines "incidental" as "happening or likely to happen in an unplanned or subordinate conjunction with something else." While it may have been "likely to happen" that plaintiff's personal property located on his sister's land would be damaged during the execution of the default judgment, it certainly cannot be said that plaintiff's own real property or his personal property located on his own real property was "likely" to be damaged as well. Accordingly, the trial court erred in finding that plaintiff had no standing to pursue this portion of his action.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Patrick M. Meter

McDonald, J. did not participate.